

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: §  
§  
CIRCUIT CITY STORES, INC., et al § CASE NO. 08-35653-KRH  
§ Jointly Administered  
§  
DEBTORS. § CHAPTER 11

**PANATTONI NORTHGLENN'S OBJECTIONS TO  
MOTION OF THE DEBTORS FOR ORDERS UNDER  
11 U.S.C. §§ 105, 363, AND 365 (I) APPROVING BIDDING  
AND AUCTION PROCEDURES FOR SALE OF UNEXPIRED  
NONRESIDENTIAL REAL PROPERTY LEASES FOR CLOSING  
STORES, (II) SETTING SALE HEARING DATE, AND (III)  
AUTHORIZING AND APPROVING (A) SALE OF CERTAIN  
NONRESIDENTIAL REAL PROPERTY LEASES FREE AND CLEAR  
OF LIENS, CLAIMS, AND ENCUMBRANCES, (B) ASSUMPTION  
AND ASSIGNMENT OF CERTAIN UNEXPIRED NONRESIDENTIAL  
REAL PROPERTY LEASES, AND (C) LEASE REJECTION PROCEDURES**

Panattoni Development Company, Inc., as Agent for Charles L. Kessinger, Jacque L. Kessinger and Northglenn Retail, LLC ("Panattoni Northglenn"), by and through its undersigned counsel, hereby objects to the *Motion of the Debtors for Orders Under 11 U.S.C. §§ 105, 363, and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (II) Setting Sale Hearing Date, and (III) Authorizing and Approving (A) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases, and (C) Lease Rejection Procedures* (the "Bid Procedure Motion"), and in support thereof, respectfully states as follows:

## **BACKGROUND**

1. On November 10, 2008 ("Petition Date"), the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code"), thereby commencing these cases.

2. Panattoni Northglenn, as landlord, and Circuit City Stores West Coast, Inc. ("Circuit City West") (one of the Debtors herein), as tenant, are parties to a lease agreement (the "Northglenn Lease") under which Panattoni Northglenn leases certain property (the "Leased Premises") located at I-25 and 104<sup>th</sup> Avenue, Northglenn, Colorado to Circuit City West.

3. On or about November 25, 2008, the Debtors filed the Bid Procedure Motion, in which the Debtors seek an order establishing procedures for marketing and selling certain Closing Store Leases. In the Bid Procedure Motion, the Northglenn Lease is listed as one of the Closing Store Leases. The Bid Procedures contemplate a sale and assumption and assignment of the Closing Store Leases or termination of the lease on December 22, 2008.

4. In the interim, the Debtors continue to enjoy the benefits of the Northglenn Lease but have failed to timely perform their post-petition obligations under the Northglenn Leases as required under section 365(d)(3) of the Bankruptcy Code.

5. As of the filing of this objection and request, the Debtors owed Panattoni Northglenn the following post-petition obligations under the Northglenn Lease (plus attorneys' fees and expenses):

|   |              |
|---|--------------|
| Rent for November <sup>1</sup> and December | \$ 74,256.00 |
| CAM for November and December               | \$ 6,693.85  |
| Insurance for November and December         | \$ 2,231.35  |
| Taxes for November and December             | \$ 8,925.00  |
| Total due                                   | \$ 92,106.20 |

**OBJECTIONS AND REQUEST TO COMPEL  
COMPLIANCE WITH SECTION 365(d)(3)**

6. Panattoni Northglenn objects to the relief requested in the Bid Procedure Motion unless it is conditioned on the Debtors complying with their obligations under section 365(d)(3).

7. The Debtors should not be allowed to continue to enjoy the benefits of the Northglenn Lease without timely complying with their post-petition obligations under the lease as required under section 365(d)(3) of the Bankruptcy Code.

8. As noted, the Debtors owe Panattoni Northglenn in excess of \$92,106.20 in post-petition rent, CAM charges, insurance and taxes (plus attorneys' fees and expenses).

9. Section 365(d)(3) provides that the Debtors must timely perform these obligations pending assumption or rejection of the Lease. *See* 11 U.S.C. § 365(d)(3). Therefore, Panattoni Northglenn requests that the Court compel the Debtors to comply with their post-petition obligations under the Northglenn Lease pending assumption or rejection of the lease as required under section 365(d)(3) of the Bankruptcy Code.

10. Panattoni Northglenn also objects to the Bid Procedure Motion because Exhibit B (which contains the proposed cure amounts) is not legible and therefore, counter parties cannot determine if the correct cure amount is listed.

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<sup>1</sup> November numbers were calculated to include the post-petition stub period only. Panattoni Northglenn reserves its rights to collect the full amounts owed for November, 2008.

**JOINDER IN OTHER LANDLORD OBJECTIONS**

11. To the extent not inconsistent with this objection and request, Panattoni Northglenn joins the objections of the other landlords to the Bid Procedure Motion.

**PRAYER**

WHEREFORE, PREMISES CONSIDER, Panattoni Northglenn moves the Court to deny the relief requested in the Bid Procedure Motion and to compel the Debtors to timely comply with their obligations under section 365(d)(3) of the Bankruptcy Code, and for such other and further relief as the Court deems just and proper both in equity and at law.

Respectfully submitted,

**CANTOR ARKEMA, P.C.**

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**ATTORNEYS FOR PANATTONI  
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JACQUES L. KESSINGER AND  
NORTHGLENN RETAIL, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the parties listed on the attached service list via electronic means as listed on the court's ECF noticing system or by regular U. S. First Class Mail on this 3rd day of December, 2008.

/s/ *William A. (Trey) Wood, III*  
William A. (Trey) Wood, III

**CIRCUIT CITY STORES, INC.**  
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